

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

FILED

MAR 17 1983

ASHEVILLE, N. C.
U. S. DISTRICT COURT
WESTERN DISTRICT OF N.C.

IN RE: ASBESTOS-RELATED)
LITIGATION)

No. WDCP-83-1

INITIAL PRE-TRIAL ORDER COORDINATING PROCEEDINGS

It appearing that there are certain actions pending in the United States District Court for the Western District of North Carolina in which plaintiffs claim damages for alleged exposure to asbestos or asbestos-containing products; that most of the defendants are the same in each case; that considerable discovery will be done by the parties in each case; and that other actions against many of the defendants seeking damages for alleged exposure to asbestos or asbestos-containing products are anticipated;

The undersigned Judge of the United States District Court for the Western District of North Carolina is of the opinion that extensive preparation will be necessary in each of these cases and that the orderly administration of justice and the interests of all parties, both in time and economy, lend themselves to a determination that pre-trial proceedings should be coordinated.

For the purpose of coordinating proceedings and for the purpose of coordinating other procedures as may be hereafter determined by the Court, it is hereby ADJUDGED and ORDERED:

GENERAL:

1. Any action which may hereafter be instituted or conducted in the United States District Court for the Western District of North Carolina and which alleges claims for injury or death as a result of exposure to asbestos or asbestos-containing products shall be made a part of these Coordinated Proceedings and shall be governed by the terms of this Order unless otherwise ordered.

2. Civil Actions Nos. A-C-81-289, A-C-82-276, and A-C-82-293 now pending in the United States District Court for the Western District of North Carolina shall be governed by the terms of this Order.

3. The purpose of this Order is not to consolidate any case or join any parties in other actions, but to establish a uniform procedure for the conduct and coordination of orderly discovery in such cases in order to facilitate pre-trial proceedings and to avoid duplication whenever possible.

4. For the convenience of the Court and the parties, these Coordinated Proceedings shall be designated as No. WDCP-83-1, and styled as "In re: Asbestos-Related Litigation." The Clerk shall establish a master docket sheet and master file for maintaining records of these Coordinated Proceedings.

5. Filings with a general application to all or a substantial portion of the actions in these proceedings shall be filed under the WDCP-83-1 designation and docketed appropriately. Filings pertaining solely to individual

cases shall be filed only in the individual case and should not carry the Coordinated Proceeding designation. A filing in the Coordinated Proceeding constitutes a filing in each asbestos case pending in the district at the time of filing unless the pleading on its face indicates that it applies only to specified cases.

6. The Clerk is directed to review complaints filed in civil actions in this district from this day forward in order to make an initial determination of whether the complaint seeks recovery of damages for exposure to asbestos or asbestos-containing products and therefore whether the action should be included in these Coordinated Proceedings. Upon making an initial determination that an action should be included in these Coordinated Proceedings, the Clerk shall serve on plaintiff's attorney an order indicating that the action will be included in these proceedings and incorporating this order by attachment. The Clerk shall also send one copy of each new complaint for informational purposes to Liaison Counsel for the defendants as soon as it is determined that the action will be included in these proceedings.

7. Any attorney who represents a plaintiff in any action in these Coordinated Proceedings who hereafter files a complaint initiating a new asbestos-related action shall state in the first paragraph of the complaint whether the action appears appropriate for coordination in these proceedings.

8. Any party wishing to object to the Clerk's initial

determination that an action should or should not be included in these proceedings shall do so by a motion to this Court.

9. Court orders and notices of court hearings and trials shall be distributed by the Clerk to all counsel in the pertinent proceedings.

10. Any reference herein to plaintiffs or defendants, except when otherwise specifically directed, shall have reference to any and all plaintiffs and any and all defendants mentioned in any suit or action made a part of these Coordinated Proceedings.

11. Inasmuch as there are numerous parties, both plaintiff and defendant, in these Coordinated Proceedings represented by at least one separate counsel in most instances, and inasmuch as from time to time there may be situations in which most, if not all, of the parties may have a common interest, then in such situations, the parties are authorized to organize committees and otherwise coordinate their actions so as to avoid unnecessary duplication of effort and to coordinate action taken wherever possible. In view of the nature of this litigation and the desirability for cooperation and communication among the parties and among the defendants, it is ordered that the defendants may cooperate among themselves in the defense of this action and that no communication, interaction, exchanging of materials or work products or other aspects of the preparation for trial occurring subsequent to June 28, 1979, the date of the first recent asbestos case

in the state of North Carolina, will be admitted as evidence of any conspiracy, or as a waiver of any privilege or protection otherwise available, or as any indication of liability under any theory.

ORGANIZATION:

12. (a) Counsel for defendants have conferred and named a Steering Committee for the purpose of coordinating matters common to all or most defendants. Specifically, the Steering Committee will coordinate the scheduling of hearings, discovery, motions, interrogatories, depositions, briefing and arguing motions, production and examination of documents, obtaining independent medical examinations, requests for admissions and such other matters as may be proper for group coordination.

(b) From the membership of the Steering Committee, two defense attorneys shall be designated as Liaison Counsel for the purpose of liaison with the Court and the plaintiffs' attorneys.

(c) Counsel for plaintiffs shall confer and name Liaison Counsel for the purpose of liaison with the Court and defendants' Liaison Counsel.

(d) Liaison Counsel may be rotated from time to time as necessary, and in the event of such rotation, that fact shall forthwith be communicated to the Court and Liaison Counsel for the opposing parties. A memorandum of the name, address and telephone number of the Liaison Counsel shall be

filed with the Clerk. Any changes shall be promptly listed.

(e) The Steering Committee, through Liaison Counsel, shall designate a spokesperson at all conferences and meetings with the Court, subject to the right of each party's counsel to attend and to present individual or divergent positions where necessary.

(f) Liaison Counsel shall call meetings of counsel for the discussion or proposal of joint actions; meet with the Court to initiate proposals, suggestions, proposed joint motions, orders, briefs and other procedures; and perform such other joint acts or functions as authorized hereinabove or requested by the parties in interest.

(g) Nothing herein shall preclude any counsel from participating in discovery and other pre-trial proceedings to the extent necessary to represent the individual interests of his client, so long as such participation does not cause unnecessary duplication.

DISCOVERY:

13. Because this asbestos-related litigation is exceptionally difficult, the ordinary discovery period noted in Rule 10 of the Local Rules for this District will not apply to the cases made part of these Coordinated Proceedings. The discovery period for these cases shall be one year from the filing of the complaints, except the discovery period for Hyer will be extended to August 15, 1983.

14. Except as ordered by the Court, depositions shall

be scheduled and conducted in accordance with the following:

(a) Notices for depositions shall be served no later than fifteen (15) days prior to the dates of the scheduled depositions.

(b) Examination of a witness or a party on oral deposition, whether such examination is by plaintiffs or defendants, shall be by a primary attorney and one backup attorney designated by the defense Steering Committee or the plaintiff's Liaison Counsel as appropriate. Nothing herein shall preclude any other counsel from participating in the deposition to the extent deemed necessary to represent the individual interests of his or her client as long as participation does not involve unnecessary duplication. Out-of-state counsel may be designated by the defense Steering Committee or plaintiff's attorney to conduct or participate in depositions.

(c) All depositions taken shall be subject to the rule that all objections and motions to strike, except objections as to the form of the question, shall be reserved and shall be stated and heard at a subsequent date. An objection made during a deposition by any counsel for any plaintiff or by any counsel for any defendant shall be considered as being made on behalf of all plaintiffs or defendants respectively, except that any counsel may disclaim such objection by so stating.

(d) During the questioning of a deponent and while a question is pending, no counsel shall confer with the deponent.

(e) Each deposition shall be recorded and transcribed by an approved method by a qualified reporter. Unless otherwise ordered, the sealing of the deposition is waived.

(f) Prior to the beginning of any deposition, each counsel of record present shall state on the record and within the hearing of the deponent his or her name and the party which he or she represents. Thereafter, prior to or during his or her examination of the deponent, each such attorney shall only be required to state his or her name for the deponent and shall not be required to identify his or her client for the deponent. No other counsel shall provide any further identification of such attorney or his or her client to the deponent.

(g) Multi-jurisdiction depositions may be noticed in these Coordinated Proceedings or any individual case included therein in the manner prescribed for depositions by the Federal Rules of Civil Procedure and by this Order. Notice of such a deposition must be served on all parties at least twenty-one (21) days prior to the date of the deposition. In addition, the party noticing a multi-jurisdiction deposition shall state in the notice each jurisdiction in which the deposition has been or will be noticed to the extent known to the party at the time notice is given.

(h) For the taking of a deposition of any expert witness, or out-of-state deposition, at least twenty-one (21) days' notice must be given.

(i) The notice of the taking of any deposition of any out-of-state or expert witness shall be accompanied with a statement giving (1) the name and address of the witness; (2) the field in which he or she is being offered as a witness; (3) the substance of the facts to which the proposed witness is expected to testify; (4) the substance of the opinions to which the proposed witness is expected to testify and a summary of the grounds for such opinion; and (5) a summary of the proposed witness' qualifications within the field in which he or she is expected to testify.

(j) Whenever any party shall notice the deposition of any witness, any opposite party shall have the right to take a discovery deposition of any such witness prior thereto; provided, however, unless specifically waived by the parties, there shall be a hiatus of at least five (5) days between the discovery deposition and the noticed deposition.

(k) Videotape depositions are to be taken with leave of Court upon motion or by written stipulation of the parties pursuant to Rule 30(b)(4) of the Federal Rules of Civil Procedure. If a videotape deposition proceeds pursuant to Court order or stipulation, then the following conditions and guidelines will apply to the deposition, along with subparagraphs 14(b), (c), (d), and (f) above:

(1) In addition to the videotaped record, the deposition shall be recorded and transcribed by an approved method by a qualified court reporter. As used herein, the

word "stenographic" includes any approved method of recording and transcribing a deposition other than videotape. Unless otherwise ordered, the sealing of the transcribed deposition is waived.

(2) All attorneys of record attending the deposition, and the video operators and court reporter, shall identify themselves by name for the record one after another, on camera at the beginning of the deposition.

(3) The swearing and affirming of the witness shall be done on camera. The oath or affirmation shall be administered to the witness by a person authorized to do so by law.

(4) At the beginning of the examination by any counsel, counsel shall identify himself or herself by name within the camera's field of vision. The camera will thereafter focus exclusively on the deponent at all times during the deposition, except for identification of exhibits, and will not zoom in or out on a witness or any other person at the deposition. The camera shall not "pan" other than to include exhibits, and the field of view should, to the extent possible, consist of a plain background.

(5) During the videotape deposition, the deponent shall in no way act unnaturally in answering questions or give an appearance in such a fashion which elicits sympathy. The deposition shall be conducted in a

normal atmosphere as would any other deposition.

(6) If during the course of the deposition it becomes necessary to have an earlier question or answer or other portion of the record of the deposition re-read, this shall be accomplished by requesting the person recording the deposition stenographically to read from the stenographic record.

(7) The videotape itself will be available for the Court and any and all counsel in order that the Court or counsel may compare the stenographic transcript with the videotape. The original videotape will remain in the possession of the court reporter who made the stenographic record. Said court reporter shall protect and preserve the unaltered videotape in its entirety, pending further orders of the Court.

(8) A copy of any part or all of the videotape deposition may be made by or for any requesting counsel of a party at said requesting party's own expense. However, no part of the videotape deposition shall be released or made available in any way to any member of the public prior to entry of an order of the Court upon notice to all counsel with the right to object.

(9) The cameraman and person making the videotape recording shall take an oath to record the proceedings accurately and in a trustworthy manner. He or she shall certify as to the accuracy and completeness of

the recording both orally and visually at the conclusion of the deposition in the same manner as a stenographic reporter certifying a typed record of the deposition.

(10) It shall be the duty of the person who records the deposition stenographically to accurately record during the course of the deposition as to when a tape is changed, when examination by each of the various counsel commences and ends, and whenever there is an interruption of the continuous tape exposure for the purposes of off-the-record discussions, mechanical failure of the machine, or other similar technical problems. Before the video recorder is turned off for any reason, the video operator shall allow all parties to briefly state their positions, agreement, or disagreement with that action for the record.

(11) The video equipment shall be of sufficient quality to produce an accurate and trustworthy videotaped record of the deposition. If during the deposition there is a failure of the equipment, either visual or auditory, or the product is of such poor quality as to render the use of the videotape unfair to the interest of any of the parties hereto, then no part of the videotape shall be utilized by any party in respect of such deposition and the parties will use, absent an agreement of counsel, the stenographic transcription of the deposition, provided the same otherwise complies

with legal requirements.

(12) Objections shall be ruled upon by the Court on the basis of the stenographic transcript, and if any questions or answers are stricken by the Court, then the copy of the videotaped recording which is to be used in court shall be edited to reflect such deletion so that it will conform in all respects to the stenographic minutes of the proceedings. However, in no event shall the original videotaped recording be altered in any manner except as expressly approved by this Court.

(13) The video cameraman will prepare a log index, using the same format as the stenographic record, cross-referenced to the digital counter on the camera. The log index will indicate the digital counter number for every twenty-five (25) pages of the stenographic record. Additionally, the log index shall list all exhibits and the names of all persons and parties present at the deposition. The party noticing and conducting the videotape deposition shall bear the expense of the original videotape and the original transcribed deposition.

15. No later than ninety (90) days from the date of filing of the Complaint each plaintiff shall serve on all parties the following:

(a) One master identification list, consisting of the following:

(1) The asbestos-containing PRODUCTS to which the plaintiff contends he, she or the decedent was exposed, identified by brand name, if known, and if unknown, by generic name and specific application;

(2) For each product, the specific DEFENDANT to which the plaintiff attributes said product;

(3) For each product and attributed defendant, the specific DATES during which, and specific LOCATIONS at which, the plaintiff contends he, she or the decedent was exposed;

(4) For each product and attributed defendant and corresponding date and location of exposure, the name, address, and telephone number of each WITNESS who will identify said product for each date and location.

(i) The master identification list shall consist of the following format:

MASTER IDENTIFICATION LIST

| <u>Product</u> | <u>Defendant</u> | <u>Date(s) Of Exposure</u> | <u>Location Of Exposure</u> | <u>Witness(es)</u> |
|----------------|------------------|--------------------------------|---------------------------------|--------------------|
|----------------|------------------|--------------------------------|---------------------------------|--------------------|

(ii) The master identification list shall be verified by the plaintiff by oath or affirmation and shall have the effect of an answer under oath to an interrogatory.

(b) A list of the names and addresses of all physicians and medical facilities by whom or at which the

plaintiff or the decedent was treated for any illness. The list given shall have the effect of an answer under oath to an interrogatory.

(c) Copies of any medical opinion or opinions indicating that the plaintiff has or the decedent had an asbestos-related disease. If no written opinion is available, a statement or any oral opinion received by the plaintiff, or his or her attorney, and the name and address of the doctor or doctors giving the opinion.

16. No later than forty-five (45) days after the filing of the complaint, each plaintiff shall provide defendants' Liaison Counsel written authorizations allowing the defendants to obtain social security records, tax records, employment records, workers' compensation records, hospital and physician medical records, union records, military records, and Veterans Administration records.

17. With regard to interrogatories:

(a) Counsel for defendants shall confer and prepare three standard First Sets of Interrogatories to Plaintiffs, one applicable to the case of a living plaintiff, the second applicable in a death case, and the third applicable in the case of bystander exposure. Upon receipt of notice that an action is included in these Coordinated Proceedings, Liaison Counsel for the defendants will serve on the plaintiff's attorney the applicable standard First Set of Interrogatories. Within sixty (60) days of service of those interrogatories,

each plaintiff shall provide answers or objections thereto and serve them on all parties.

(b) Once any plaintiff's attorney has been served with the standard interrogatories, such interrogatories will be deemed to apply to all pending and subsequently-filed cases brought by said attorney, without the necessity of the defendants' Liaison Counsel serving the same standard interrogatories. In those cases instituted subsequent to the entry of this order and in which there is no necessity of serving the standard interrogatories as just noted, the plaintiff shall serve on all parties answers or objections to said standard interrogatories within sixty (60) days of the filing of his or her complaint. However, in the case of a new plaintiff represented by an attorney who has not previously appeared for some other plaintiff in these Coordinated Proceedings, Liaison Counsel for the defendants will serve a copy of the applicable standard interrogatories on such attorney, and the new plaintiff shall have sixty (60) days after service of said interrogatories to provide all parties answers or objections thereto.

(c) Individual defendants shall be permitted to address supplemental interrogatories to the plaintiff designed to obtain information with respect to their individual defendants, their products, or matters peculiar to their individual interests to the extent they are not unnecessarily

duplicative.

(d) Counsel for plaintiffs shall confer and prepare a standard First Set of Interrogatories to the Defendants which shall be designed to obtain information common to the claims of most or all of the plaintiffs in most or all of the present and future cases. Within thirty (30) days of the entry of this Order, plaintiffs shall serve the standard First Set of Interrogatories on each defendant. Within sixty (60) days after service of those interrogatories, each defendant shall provide objections to individual interrogatories as appropriate or answers which shall be deemed applicable to each action which is now or may hereafter be included in the Coordinated Proceedings. In the event a defendant not previously named in these actions is named by a plaintiff, that plaintiff's counsel shall promptly inform Liaison Counsel for plaintiffs who will serve the Standard First Set of Interrogatories on such defendant. It is the Court's intention to eliminate, to the extent possible, multiple, identical sets of interrogatories from plaintiffs to defendants. Nothing herein shall be interpreted to prevent the plaintiffs from filing supplemental interrogatories so long as they are not unnecessarily duplicative.

18. With regard to requests to produce documents:

(a) Counsel for defendants shall confer and prepare a standard First Request to Produce Documents. Within sixty (60) days of service of the Request to Produce, each

plaintiff shall respond by complying with the Request or by providing objections thereto and shall serve the response on Liaison Counsel for the defendants.

(b) Once any plaintiff's attorney has been served with the standard Request to Produce, such Request will be deemed to apply to all pending and subsequently-filed cases brought by said attorney, without the necessity of the defendants' Liason Counsel serving the same standard Request. In those cases instituted subsequent to the entry of this order and in which there is no necessity of serving the standard Request to Produce as just noted, the plaintiff shall comply with the Request or provide objections thereto and serve his or her response on defendants' Liason Counsel within sixty (60) days of the filing of his or her complaint. However, in the case of a new plaintiff represented by an attorney who has not previously appeared for some other plaintiff in these Coordinated Proceedings, Liason Counsel for the defendants will serve a copy of the standard Request to Produce on such attorney, and the new plaintiff shall have sixty (60) days after service of said Request to respond.

(c) Individual defendants shall be permitted to serve on plaintiffs supplemental requests to produce designed to obtain information with respect to their individual defendants, their products, or matters peculiar to their individual interests to the extent they are not unnecessarily duplicative.

(d) Counsel for plaintiffs shall confer and prepare a standard Request to Produce Documents for each defendant which shall be designed to obtain information common to the claims of most or all of the plaintiffs in most or all of the present or future cases. Within sixty (60) days of service of each Request, each defendant shall respond by complying with the Request or by providing objections thereto and shall serve the response on each plaintiff's counsel. It is the Court's intention to eliminate, to the extent possible, multiple, identical requests to produce documents from plaintiffs to defendants. Nothing herein shall be interpreted to prevent the plaintiffs from submitting supplemental requests to produce documents so long as they are not unnecessarily duplicative.

19. Each party shall have sixty (60) days to respond to any interrogatories, any requests for admission, and any requests to produce documents.

20. Unless otherwise specified or allowed in this Order, all discovery and other pre-trial proceedings shall be governed by and shall be pursuant to the Federal Rules of Civil Procedure.

PRODUCT/DEFENDANT IDENTIFICATION

21. Seven (7) months after filing of the complaint, each plaintiff shall provide the defendants a final master identification list identifying products, defendants, dates and locations of exposure, and witnesses, utilizing the

format described in Paragraph 15(a) of this Order and the plaintiff is thereafter precluded from naming and using at trial or in connection with motions any additional exposure witnesses not already named and identified by the plaintiff in accordance with the requirements of this Order.

22. Seven (7) months after the filing of the complaint, in addition to the final master identification list described in Paragraph 21 of this Order, the plaintiff shall provide or have provided to each individual defendant all such other evidence upon which the plaintiff intends to rely to establish the identification of that particular individual defendant as being a defendant to whose product(s) plaintiff or the decedent was exposed. Seven (7) months after the filing of the complaint, the plaintiff is precluded from presenting and using at trial or in connection with motions any additional evidence of identification of or exposure to asbestos-containing products not already identified and presented in accordance with the requirements of this Order.

23. After seven (7) months from the filing of the complaint, if the plaintiff has not identified a product or products of a particular defendant to which he, she or the decedent was allegedly exposed, and if the plaintiff has failed to name the exposure witness or witnesses who will identify said products or plaintiff has failed to present to said defendant other evidence which allegedly supports such exposure, this Court shall dismiss the plaintiff's claims

against that particular defendant upon motion of the defendant for lack of product identification.

24. With respect to Hyer, the final date upon which the plaintiff may serve the final master identification list and/or identify other exposure evidence as set forth above in Paragraphs 21 and 22 respectively shall be sixty (60) days from March 3, 1983. With respect to Young and Rabb, the date for compliance with Paragraph 15 hereinabove shall be no later than ninety (90) days from March 3, 1983, and the final date for compliance with the provisions of Paragraphs 21 and 22 hereinabove shall be no later than seven (7) months from March 3, 1983.

EXAMINATIONS:

25. (a) Defendants shall be entitled to have the plaintiff medically examined by at least one specialist in each field of medicine applicable to that plaintiff's allegations.

(b) The Steering Committee through Liaison Counsel for the defendants shall advise plaintiffs' Liaison Counsel of the doctor or doctors to make such examinations providing to the extent practicable thirty (30) days' prior notice of the time, place, scope of examination and the diagnostic tests proposed.

(c) Plaintiffs' counsel shall be furnished with copies of all reports that result from said examinations.

(d) Plaintiffs shall make available to the defendants' doctor or doctors any biopsy results, available tissue slides or samples, x-rays, test results, and any other available diagnostic results or tools which might be used to establish a diagnosis or medical opinion. In a case of wrongful death, in addition to the foregoing, plaintiffs shall furnish to the defendants' doctor or doctors any available tissue samples or slides and the autopsy results, if any.

MISCELLANEOUS:

26. Counsel for the plaintiffs and the defendants shall confer and devise a method for the consecutive numbering of exhibits which will be applicable to all actions included in these Coordinated Proceedings.

27. All future complaints shall include the diagnosis of the alleged asbestos-related disease, the date of diagnosis of the disease, the plaintiff's (or decedent's) social security number, and alleged periods of exposure. With respect to any complaints filed heretofore or hereafter which do not contain those allegations, plaintiffs will amend the complaint promptly on demand by any defendant. Following such amendment no further response from defendants shall be required, such allegations being deemed denied. A specific response may, however, be made by any defendant in its discretion.

28. No party shall file a motion to compel or in any


way default another party with regard to the failure to respond to any pleading without first notifying such party in writing and giving it ten (10) days to respond.

29. The defendants shall have sixty (60) days from the date of service of process to file answers, defenses, or non-responsive pleadings.

30. The Court expects all counsel to cooperate in and respond promptly and in good faith to interrogatories, motions, requests to produce, depositions, procedures adopted in or applicable to these actions, and all orders of the Court. A failure to do so may result in a dismissal of a claim, striking of a defense, denial of the right of use of materials discovered, the assessment of costs, attorneys' fees, damages, forfeitures, or other sanctions.

31. If any matter arises which would result in a delay in the proceedings, or the taking or completion of discovery, or preparation for trial, or otherwise, the parties have the duty to present the issues to the Court for determination as soon as practicable after the matter arises.

This the 16th day of March, 1983.


Judge, United States District
Court for the Western District
of North Carolina